

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ABBOTT LABORATORIES, an Illinois corporation, FOURNIER INDUSTRIE ET SANTÉ, a French corporation, and LABORATOIRES FOURNIER S.A., a French corporation,

Plaintiffs,

v.

TEVA PHARMACEUTICALS USA, Inc.,  
a Delaware corporation,

Defendant.

Civil Action No. 02-1512 (KAJ)  
(consolidated)

TEVA PHARMACEUTICALS USA, Inc.,  
a Delaware corporation, and TEVA  
PHARMACEUTICAL INDUSTRIES LTD.,  
an Israeli corporation,

Counterclaim Plaintiffs,

v.

ABBOTT LABORATORIES, an Illinois corporation, FOURNIER INDUSTRIE ET SANTÉ, a French corporation, and LABORATOIRES FOURNIER, S.A., a French corporation,

Counterclaim Defendants.

ABBOTT LABORATORIES, an Illinois corporation, FOURNIER INDUSTRIE ET SANTÉ, a French corporation, and LABORATOIRES FOURNIER S.A., a French corporation,

Plaintiffs,

v.

IMPAX LABORATORIES, INC,  
a Delaware corporation,

Defendant.

Civil Action No.: 03-120-KAJ  
(Consolidated)

IMPAX LABORATORIES, INC,  
a Delaware corporation,

Counterclaim Plaintiffs,

v.

ABBOTT LABORATORIES, an Illinois corporation, FOURNIER INDUSTRIE ET SANTÉ, a French corporation, and LABORATOIRES FOURNIER, S.A., a French corporation,

Counterclaim Defendants.

IN RE TRICOR DIRECT PURCHASER ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Civil Action No. 05-340 (KAJ)

(consolidated)

IN RE TRICOR INDIRECT PURCHASER ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Civil Action No. 05-360 (KAJ)

(consolidated)

**DEFENDANTS' CONSOLIDATED  
MOTION TO DISMISS PLAINTIFFS' COMPLAINTS**

Abbott Laboratories, Fournier Industrie et Sante and Laboratories Fournier S.A. hereby jointly move this Court to dismiss Teva's and Impax's Counterclaims and all of the Complaints pursuant to Fed. R. Civ. P. 12(b)(6).

Abbott Laboratories hereby individually moves this Court to dismiss, pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6), or to strike, pursuant to Fed. R. Civ. P. 12(f): (1) those portions of Teva's and Impax's Counterclaims against Abbott that are dependent on Walker Process fraud or inequitable conduct and (2) those portions of Plaintiffs' claims that are dependent on inequitable conduct.

Fournier Industrie et Sante and Laboratories Fournier S.A. hereby individually move this Court to dismiss or to strike those portions of Teva's, Impax's and any other Plaintiffs' claims that are dependent on Marketing Conduct or on wrongful listing in the Orange Book.

The grounds for this motion are fully set forth in Defendants' Consolidated Opening Brief in Support of Their Consolidated Motion to Dismiss Plaintiffs' Complaints, filed contemporaneously herewith.

*Attorneys for Abbott Laboratories:*

/s/ Mary B. Graham

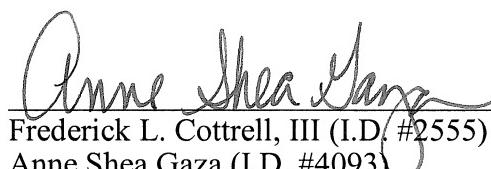
---

Mary B. Graham (I.D. #2256)  
 mgraham@mnat.com  
 MORRIS, NICHOLS, ARSHT & TUNNELL  
 1201 N. Market Street  
 P.O. Box 1347  
 Wilmington, DE 19801  
 (302) 658-9200

*Of Counsel:*

William F. Cavanaugh, Jr.  
 Eugene M. Gelernter  
 Chad J. Peterman  
 Alexis A. Gander  
 PATTERSON, BELKNAP, WEBB TYLER LLP  
 1133 Avenue of the Americas  
 New York, NY 10036-6710  
 (212) 336-2000

*Attorneys for Fournier Industrie et Santé, and  
 Laboratories Fournier S.A.:*




---

Frederick L. Cottrell, III (I.D. #2555)  
 Anne Shea Gaza (I.D. #4093)  
 cottrell@rlf.com  
 gaza@rlf.com  
 RICHARDS, LAYTON & FINGER  
 One Rodney Square  
 Wilmington, DE 19801  
 (302) 651-7700

*Of Counsel:*

Steven C. Sunshine  
 Matthew P. Hendrickson  
 Maria M. DiMoscato  
 Cadwalader, Wickersham & Taft LLP  
 1201 F Street, N.W.  
 Washington, D.C. 20004  
 (202) 862-2200

Timothy C. Bickham  
 STEPTOE & JOHNSON LLP  
 1330 Connecticut Avenue, N.W.  
 Washington, DC 20036-1795  
 (202) 429-5517

Dated: October 19, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2005, I caused to be served by hand delivery the foregoing document and electronically filed the same with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

Josy W. Ingersoll  
 John W. Shaw  
 Karen Keller  
 Young Conaway Stargatt & Taylor, LLP  
 The Brandywine Building  
 1000 West Street, 17th Floor  
 P.O. Box 391  
 Wilmington, Delaware 19899-0391

Jeffrey S. Goddess  
 Rosenthal, Monhait, Gross & Goddess, P.A.  
 919 Market Street, Suite 1401  
 P.O. Box 1070  
 Wilmington, DE 19899-1070  
 Tel. (302) 656-4433  
 Fax. (302) 658-7567

Jonathan L. Parshall  
 Murphy Spadaro & Landon  
 1011 Centre Road, Suite 210  
 Wilmington, DE 19801

Mary Matterer  
 Morris, James, Hitchens & Williams  
 222 Delaware Avenue, 10th Floor  
 Wilmington, DE 19801

Pamela S. Tikellis  
 Robert J. Kriner, Jr.  
 A. Zachary Naylor  
 Chimicles & Tikellis LLP  
 One Rodney Square  
 P.O. Box 1035  
 Wilmington, DE 19899

Elizabeth M. McGeever  
 Prickett Jones Elliott, P.A.  
 1310 King Street  
 Wilmington, DE 19801

I hereby certify that on October 19, 2005, I sent by facsimile the foregoing document to the following non-registered participants:

William Christopher Carmody  
 John W. Turner  
 Shawn J. Rabin  
 Susman Godfrey LLP  
 Suite 4100  
 901 Main Street  
 Dallas, TX 75202-3775

Scott E. Perwin  
 Kenny Nachwalter, P.A.  
 1100 Miami Center  
 201 South Biscayne Boulevard,  
 Miami, Florida 33131-4327

Bruce M. Gagala  
 M. Daniel Hefner  
 Leydig, Voit & Mayer, LTD  
 Two Prudential Plaza  
 Suite 4900  
 180 N. Stetson Avenue  
 Chicago, IL 60601-6780

Philip J. McCabe  
 Kenyon & Kenyon  
 333 West San Carlos Street  
 Suite 600  
 San Jose, CA 95110

Bruce E. Gerstein  
Barry Taus  
Adam Steinfeld  
Garwin Gerstein & Fisher LLP  
1501 Broadway, Ste 1416  
New York, NY 10036

Patrick E. Cafferty  
Bryan L. Clobes  
Miller Faucher and Cafferty LLP  
One Logan Square  
18th & Cherry Street  
Suite 1700  
Philadelphia, PA 19103

Jeffrey L. Kodroff  
Spector, Roseman & Kodroff, P.C.  
1818 Market Street  
Suite 2500  
Philadelphia, PA 19103

Bernard Persky  
Goodkind Labaton Rudoff & Sucharow LLP  
100 Park Avenue,  
New York, NY 10017

Thomas M. Sobol  
Hagens Berman Sobol Shapiro LLP  
One Main Street, 4th Floor  
Cambridge, MA 02142  
Ph. (617)482-3700  
Fax (617) 482-3003

Kenneth A. Cohen  
Elaine Herrmann Blais  
Christopher T. Holding  
Goodwin Procter LLP  
Exchange Place  
Boston MA 02109-2881

John C. Vetter  
Kenyon & Kenyon  
One Broadway  
New York, NY 10004

C. Kyle Musgrove  
Kenyon & Kenyon  
1500 K Street N.W.  
Suite 700  
Washington, D.C. 20005

Mark A. Lemley  
Asim Bhansali  
Paula Blizzard  
Keker & Van Nest LLP  
710 Sansome Street  
San Francisco, CA 94111

Joseph T. Lukens  
Hangley Aronchick Segal & Pudlin  
One Logan Square, 27th Floor  
Philadelphia, PA 19103

  
Anne Shea Gaza (#4093)  
GAZA@rlf.com